

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAFAEL ARIAS,

Defendant.

3:10-cr-0089-RCJ-VCP

ORDER

On October 24, 2011, the Court sentenced Defendant Rafael Arias to 220 months of imprisonment on Count 2 of the Second Superseding Indictment for distribution of a controlled substance. Defendant and the Government have filed a joint stipulation asking the Court to reduce Defendant's sentence to 173 months of imprisonment under 18 U.S.C. § 3582(c)(2) and Amendment 782 to U.S.S.G. § 1B1.10(d) (ECF No. 163). The Probation Office has recommended denying the motion because Defendant's behavior while in custody indicates he would pose a threat to the safety of the public if released.

A district court has discretion in applying a sentence reduction based on a retroactive amendment to the U.S. Sentencing Guidelines. *United States v. Chaney*, 581 F.3d 1123, 1125 (9th Cir. 2009). "[I]n making its determination, the court 'shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment' and 'may consider post-sentencing conduct of the

1 defendant that occurred after imposition of the original term of imprisonment.” *United States v.*
2 *Lightfoot*, 626 F.3d 1092, 1096 (quoting *Chaney*, 581 F.3d at 1126) (footnotes omitted). In
3 *Lightfoot* itself, the Court of Appeals upheld a district court’s denial of a sentence reduction
4 based on a record showing “insolence to custodial staff, fighting, threatening a staff member,
5 threatening bodily harm, and refusing to work.” *Id.*

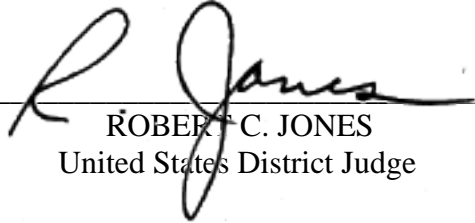
6 The Court finds that a sentence reduction is not appropriate in this case. Defendant’s
7 disciplinary log indicates he has been disciplined for multiple infractions, including being absent
8 from an assignment, using drugs and alcohol, refusing drug or alcohol tests, refusing to obey an
9 order, and threatening bodily harm. The Probation Office has concluded that Defendant
10 continues to pose a threat to the public’s safety and his own welfare. Based on Defendant’s post-
11 sentence conduct and the ongoing threat he poses to public safety, the Court denies the request
12 for a sentence reduction.

13 CONCLUSION

14 IT IS HEREBY ORDERED that the Motion for a Sentence Reduction (ECF No. 163) is
15 DENIED.

16 IT IS SO ORDERED.

17 Dated: This 26th day of January, 2016.

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20 ROBERT C. JONES
21 United States District Judge
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